



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 24 2015

James R. Moore

Shelbyville, TN 37160

RE: MUR 6788

Dear Mr. Moore:

On March 19, 2015, the Federal Election Commission reviewed the allegations in your complaint dated February 25, 2014, and found that on the basis of the information provided in your complaint, and information provided by respondents, there is no reason to believe that Jim Tracy, Jim Tracy State Senate Committee and Adam Coggin in his official capacity as treasurer, or Jim Tracy for Congress and Shane Reeves in his official capacity as treasurer violated the Act as alleged in the complaint. Accordingly, on March 19, 2015, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Jim Tracy MUR: 6788
6 Jim Tracy State Senate Committee and Adam Coggin
7 in his official capacity as treasurer
8 Jim Tracy for Congress and Shane Reeves
9 in his official capacity as treasurer
10

11 **I. INTRODUCTION**

12 This matter was generated by a complaint filed with the Federal Election Commission.

13 Jim Tracy is a member of the Tennessee State Senate and was a candidate for the U.S. House of
14 Representatives from Tennessee's 4th Congressional District in the 2014 Republican primary
15 election. The Complaint alleges that in 2012 Tracy and the Jim Tracy State Senate Committee
16 ("State Committee") paid for consulting services for Tracy's federal committee, Jim Tracy for
17 Congress ("Federal Committee"), in violation of the Federal Election Campaign Act of 1971, as
18 amended (the "Act"). Supported by an affidavit from the State Committee treasurer,
19 Respondents deny the allegations, asserting that the services paid for by the State Committee
20 were related to Tracy's duties as a state senator and his 2012 Tennessee State Senate reelection
21 campaign, not his 2014 federal campaign.

22 As discussed below, the Commission finds no reason to believe that Respondents
23 violated the Act in connection with the allegations in this complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Jim Tracy was reelected as a Tennessee State Senator on November 6, 2012. On January 1, 2013, Tracy reportedly announced his candidacy for the United States House of Representatives. Tracy filed his Statement of Candidacy with the Commission on January 11, 2013, designating the Federal Committee as his authorized campaign committee, and the Federal Committee filed its Statement of Organization on the same day. *See* Chas Sisk, *State Sen. Tracy Says Breakfast Was About Constituents*, NASHVILLE TENNESSEAN, Oct. 8, 2013 (Compl. Attach. 1 (Feb. 25, 2014)); Tracy Statement of Candidacy (Jan. 11, 2013); Jim Tracy for Congress Statement of Organization (Jan. 11, 2013).

In the time period after Tracy was reelected to the Tennessee State Senate, but before he formally declared his federal candidacy (*i.e.*, between November 6, 2012, and January 1, 2013), the State Committee paid for a number of activities, including fundraising, holding a Christmas breakfast for constituents and the printing and mailing of Christmas cards and a “legislative issues survey.” *See* Federal and State Committee Resp.; Chas Sisk, *State Sen. Tracy Says Breakfast Was About Constituents*, NASHVILLE TENNESSEAN, Oct. 8, 2013 (Compl. Attach. 1). A news article reported that at the time of the Christmas breakfast on December 22, 2012, Tracy was known to be considering a run for Congress, though he declined to comment on that possibility at the breakfast. *Id.*

As detailed in the chart that follows, the State Committee disclosed making the following disbursements from November 14, 2012, through December 27, 2012, to Barrett Johns Strategies (“Barrett Johns”) and Majority Strategies, totaling \$35,000 and \$44,766, respectively. *See* State Committee 4th Quarter disclosure report (Feb. 13, 2013).

Date	Recipient	Purpose	Amount
11/26/2012	Barrett Johns Strategies	Professional Services – November	\$5,000
12/07/2012	Barrett Johns Strategies	Professional Services – Year End	\$20,000
12/27/2012	Barrett Johns Strategies	Professional Services – Christmas Breakfast	\$10,000
12/01/2012	Majority Strategies	Professional Services – Card	\$20,388.03
12/04/2012	Majority Strategies	Professional Services – Mail Invitation	\$14,378.22
12/11/2012	Majority Strategies	Professional Services – Survey	\$10,000
		TOTAL	\$79,766.25

1 The Complaint alleges that these disbursements to Barrett Johns and Majority Strategies
2 violate the Act because they were for services related to Tracy's federal campaign. In support of
3 the allegations, Complainant notes the following: (1) the State Committee's total disbursements
4 in the fourth quarter of 2012 (more than \$108,000) "far exceed" disbursements for the remainder
5 of 2012; (2) prior to the November 6, 2012, general election, the State Committee's payments to
6 Barrett Johns (\$7,980) were much lower, and it made no payments to Majority Strategies
7 whatsoever; (3) "in the same pre-election period," the State Committee paid \$39,004 to Margin
8 of Victory Partners, another campaign consulting firm, indicating that "Margin of Victory was
9 the firm [Tracy] used for the majority of his campaign services prior to the general election"; and
10 (4) the Federal Committee disclosed payments of \$5,000 per month to Barrett Johns or Rachel
11 Barrett & Co, LLC, which share the same address and have one of the same principals, Rachel
12 Barrett, and this amount appears to be similar to the amount of the retainer agreement that the
13 State Committee had with Barrett Johns in August 2012. Complaint at 1-2.

14 Respondents represent that the State Committee's disbursements were unrelated to
15 Tracy's federal candidacy and, moreover, were consistent with the purpose and activities of

1 Tracy's state senate campaign and position as a state legislator. Resp. at 1.¹ Specifically,
2 Respondents assert that the State Committee retained Barrett Johns as a consultant to assist the
3 State Committee in organizing events and fundraising for the 2012 state campaign. Adam
4 Coggin, treasurer of the State Committee, provided an affidavit attesting that the State
5 Committee's retainer with Barrett Johns was for work exclusively in connection with Tracy's
6 state campaign. *Id.*, Attach. A (Coggin Aff. ¶ 3). For example, Respondents assert that the
7 \$20,000 the State Committee paid the firm on December 7, 2012, was for a \$4,000 monthly
8 retainer from August to December 2012 for fundraising and that the \$20,000 fee to Barrett Johns
9 was reasonable "for the type, kind of work, and duration of the work performed by" Barrett
10 Johns given the \$335,117 that the State Committee raised "during this time" for Tracy's state
11 senate campaign.² Resp. at 2, 4 (May 12, 2014).³ Respondents also assert that it is established
12 practice in the industry to retain a fundraising consultant throughout the year even after an
13 election has ended. *Id.*

14 Further, Respondents assert that the State Committee pays for an annual event for the
15 constituents of Tracy's State Senate District like the event raised in the complaint. Respondents
16 state that the State Committee held a Christmas Family Breakfast on December 22, 2012, which
17 was advertised only in Tracy's state senate district with invitations sent only to households in the

¹ The response was filed on behalf of the Federal Committee and the State Committee. Jim Tracy did not submit a response.

² Respondents' reference to the timing of the \$335,117 raised on behalf of the State Committee is unclear. The State Committee reported total receipts of \$146,443 during calendar year 2012, including \$59,598 in receipts on the reports covering the period between August and December 2012. See <http://www.tn.gov/tref/>.

³ Respondents assert that the State Committee was invoiced in December and provided an undated invoice for the \$20,000 retainer. See Resp. at 2, Attach. B.

1 district. Resp. at 2; Coggin Aff. ¶ 6.⁴ Respondents assert that the State Committee paid \$15,000
2 to Barrett Johns to organize and staff the event and \$14,378 to Majority Strategies to print and
3 mail the invitations.⁵ Resp. at 2-3. Respondents explain that the “Christmas Family Breakfast
4 functioned in the same fashion” as annual events Tracy held in previous years for his state senate
5 constituents, such as a football tailgate party in 2011 and a fish fry in 2010. Resp. at 2. The
6 event was free for constituents and attendees were asked to bring a toy for the local Toys for Tots
7 program. *Id.* Tracy reportedly described the event as “just about thanking the folks who have
8 supported me and my family over the last eight years,” and he stated that “We do something like
9 this every year.” *Id.*, Attach. E (*Tracy Brings Breakfast, Crowd Brings Gifts*, DAILY NEWS
10 JOURNAL, Dec. 23, 2012). In the *Nashville Tennessean* article attached to the complaint, Tracy is
11 quoted on his view of the breakfast: “I always try to be accessible to my constituents, and this is
12 a perfect way for them to talk to me about the issues, especially with two new counties in my
13 Senate district.” Compl. Attach. 1.⁶

14 Additionally, the State Committee asserts that the survey referenced in the complaint was
15 a routine communication that focused on state issues. Resp. at 4. The State Committee paid
16 Majority Strategies \$10,000 to print and mail a “legislative issues survey” to Tracy’s state senate

⁴ Coggin refers, perhaps inadvertently, to “Bennett Johns Strategies” as the payee. Coggin Aff. ¶ 6. Respondents provided two undated invoices from “Barrett Johns Strategies” totaling \$15,000 for the Christmas Breakfast. Resp., Attach. F.

⁵ A copy of the invitation and the related invoice from Majority Strategies are attached to the response. *Id.*, Attach. D.

⁶ As previously noted, the article also notes that Tracy had been rumored to be considering a run for U.S. Congress. *Id.* When asked about that possibility, Tracy reportedly replied, “We’ll let you know.” Resp., Attach. E (*Tracy Brings Breakfast, Crowd Brings Gifts*, DAILY NEWS JOURNAL, Dec. 23, 2012).

1 constituents in December 2012.⁷ *Id.* at 2 and 4. The front of the survey includes a photograph of
2 Tracy, labeled “State Senator Jim Tracy” and “WORKING TO CREATE JOBS. Listening to
3 You. Representing You.” *Id.*, Attach. C. The inside of the survey asks constituents to provide
4 comments on the “issues before the 108th General Assembly” to give “valuable guidance for
5 [Tracy] as [he] votes on the bills and resolutions before the Senate.” *Id.* The survey also lists
6 several legislative accomplishments and asks eleven questions that appear to focus on state-level
7 issues (e.g., “Do you favor legislation to allow the sale of wine in grocery stores in Tennessee?”;
8 “Do you support changing Tennessee’s present method of selecting the state attorney general
9 from appointment by the State Supreme Court to election by the people?”). *Id.* Coggin attests
10 that the survey was sent only to state senate constituents. Coggin Aff. ¶ 4. Respondents also
11 assert that the survey did not refer to a future election, and was made before Senator Tracy
12 announced his campaign for U.S. Congress. *Id.* at 4.

13 Finally, Respondents state that printing and mailing of the Christmas card was related to
14 Tracy’s on-going representation of his state senate constituency. Respondents assert that the
15 State Committee traditionally pays for the printing and mailing of a Christmas card to
16 constituents each year, which is the ordinary practice of state legislators. Resp. at 5. The State
17 Committee paid \$20,388 to Majority Strategies to print and mail a Christmas card, which Coggin
18 attests was sent only to state senate constituents. *Id.* at 2; Coggin Aff. ¶ 7.

19 **B. Legal Analysis**

20 The Complaint alleges that Tracy’s State Committee paid for services for Tracy’s federal
21 campaign, namely, fundraising consulting and costs associated with the Christmas breakfast and

⁷ A copy of the legislative survey and the invoice from Majority Strategies are attached to the response.
Resp., Attach. C.

1 the printing and mailing of Christmas cards and a legislative survey. The response, supported by
2 an affidavit from the State Committee treasurer, asserts that these late 2012 activities were not in
3 connection with Tracy's federal campaign but were related to his duties as a state senator and his
4 2012 reelection to that office.

5 Federal candidates and entities directly or indirectly established, financed, maintained, or
6 controlled by or acting on behalf of those candidates are prohibited from soliciting, receiving,
7 directing, transferring, or spending funds in connection with an election for federal office unless
8 the funds are subject to the limits, prohibitions, and reporting requirements of the Act. 52 U.S.C.
9 § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1)); 11 C.F.R. §§ 300.60, 300.61. Although Tracy
10 reportedly was considering a run for Congress prior to announcement of candidacy on January 1,
11 2013,⁸ the activities alleged in the complaint do not indicate that Tracy became a federal
12 candidate earlier than January 2013, when he formally declared his candidacy. *See* 52 U.S.C.
13 § 30101(2) (formerly 2 U.S.C. § 431(2)) (federal candidate \$5,000 contribution and expenditure
14 threshold).⁹

15 In addition, Respondents submitted a sworn affidavit averring that the State Committee's
16 \$20,000 payment to Barrett Johns in December 2012 for five months of fundraising services was

⁸ See Compl. Attach. 1.

⁹ An individual who has not yet decided to run for office may "test the waters" in advance of candidacy by raising and spending funds while making that decision. 11 C.F.R. §§ 100.72, 100.131. These funds may be raised and used for the limited purpose of determining whether an individual should become a candidate. "Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received." *Id.* So long as the individual is "testing the waters," he or she is not required to file a statement of candidacy pursuant to 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)) and 11 C.F.R. § 101.1(a). The "testing the waters" exception does not apply, however, when an individual raises or spends more than \$5,000 for "activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign." 11 C.F.R. §§ 100.72(b), 100.131(b). "If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received." 11 C.F.R. §§ 100.72(a), 100.131(a).

1 exclusively in connection with Tracy's 2012 state senate campaign, and we have no information
2 to the contrary. *See* Coggin Aff. ¶ 3. The written materials at issue – the invitation to the
3 Christmas breakfast, the Christmas card and the legislative survey – reference Tracy solely as a
4 state senator and make no reference to any federal candidacy. *See* Resp., Attachs. C, D, G;
5 Coggin Aff. ¶¶ 4, 5, 7. Similarly, the available information does not suggest that Tracy
6 referenced a federal candidacy or solicited funds for a federal campaign at the Christmas
7 breakfast. *See* Resp. at 5. Furthermore, Respondents assert that the Christmas breakfast
8 “functioned in the same fashion” as events that the State Committee held in previous years so
9 that Tracy could be “accessible to [his] constituents” and allow them to “talk to [him] about the
10 issues.”¹⁰ *See* Resp. at 2; Compl. Attach. 1. In addition, the sworn affidavit states that the written
11 materials were sent only to Tracy's state senate constituents, a subset of the full list of would-be
12 constituents in the 4th Congressional District. Coggin Aff. ¶ 4, 5, 7; *see also* Resp. at 3. There is
13 no available information indicating that the invitation to the Christmas breakfast, the Christmas
14 card or the legislative survey were mailed to a wider audience. Finally, the “legislative issues
15 survey,” focused on state-level issues and also appears to be consistent with Tracy's duties as a
16 state senator.¹¹

¹⁰ *Cf.* Advisory Opinion 2009-26 (Coulson) (state legislative district event and related communications by state representative who was already a federal candidate was not in connection with a federal election because there would be no solicitation of donations or express advocacy supporting her federal campaign or any other federal election activity occurring during the event, and because she had held similar events in past years when she was not a federal candidate).

¹¹ *Cf.* Advisory Opinion 1999-11 (Byrum) (costs related to state legislative district event and associated communications by state representative who was already a federal candidate were neither contributions nor expenditures for the purpose of the Act when the discussion at the events would be limited to issues relating to constituent needs or issues affecting the state senatorial district, no advertising of the event would take place outside of the senate district, the scope of advertising and frequency of the events would be unchanged from previous years, the information relating to participants at the events would not be provided to nor made available for use by the candidate's Congressional campaign committee, and there would be no contribution solicitations or express advocacy related to the Congressional campaign during the course of the event.).

1 Under the factual allegations here, Tracy does not appear to have been a federal candidate
2 at the time of the State Committee's activities, and, in any event, all of the expenses for the
3 activities at issue – fundraising for the state campaign, producing and sending written material
4 focused solely on state-level issues, holding an annual constituent event and sending a holiday
5 card – are consistent with the activities of state officeholders and persons running for state
6 office.¹² Under these facts, the Commission concludes that the costs related to the activities at
7 issue are neither contributions nor expenditures for the purpose of the Act. Accordingly, the
8 Commission finds no reason to believe Respondents violated the Act in connection with the
9 allegations in this complaint.

¹² Cf. 52 U.S.C. § 30125(e)-(f) (formerly 2 U.S.C. § 441i(e)-(f)), Advisory Opinions 2009-26 (Coulson) and 1999-11 (Byrum).